IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14759 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NUTAN EDUCATION SARVAJANIK TRUST THRO'IDRISHBHAI A VOHRA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MA SAPA for MR LR PATHAN for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1,3 - 4.
MR HEMANG RAVAL FOR MR AD OZA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2006

ORAL JUDGMENT

1. Heard learned advocate Shri Sapa for the petitioner, learned AGP Ms. Shah for the

respondents no. 1,3,4 and learned advocate Shri Hemang Raval for Shri A.D.Oza for respondent no.2.

2. In the present petition, the petitioner trust has challenged an order dated 7-7-2004 passed by the respondent no.2-Board as upheld by the State while rejecting the appeal of the petitioner by an order dated 12-10-2004. The petitioner trust runs a primary school in village Sojitra, District Anand. The petitioner made an application for permission to start one class in Standard-8. Such permission was however, declined by impugned order dated 7-7-2004. In the said order, it is noted that certain requirements were not fulfilled. Requirement pertains to adequate facilities in the school premises. Second ground noted for rejection is that there is no justification for granting such a permission since in the same village, there are four other Secondary schools and in a radius of 6 km. there are as many as five schools existing. Yet another ground noted by the Board

is that the petitioner has not satisfactorily answered the queries raised by the District Education Officer.

3. The State Government has also rejected the appeal primarily on the ground that the justification for starting Secondary section of the school is not established. The Government also took note of deficiencies in the school premises.

4. Apparently, the main thrust of the opposition of respondents was on the ground of justification for permitting the petitioner to start a Secondary school. Though other grounds were also pressed in service, apparently, these defects are curable and learned advocate for the petitioner also submitted that the petitioner would be in a position to satisfy the authority, given a chance, that petitioner fulfills all requirements for obtaining such a permission.

5. Adverting therefore, to the main contested issue regarding justification for starting Secondary

school, it can be seen that though it is stated that in the very same village there are four other schools, learned advocate for the petitioners submitted that village Sojitra has a sizable population of approximately 16,000 people. It may also be noted that the petitioner has not requested for grant in aid facility. Yet another relevant aspect of the matter is that all four schools in the near vicinity have given their no objection to the petitioner to start the additional class.

6. Considering all these aspects of the matter, I find that decision of the authority requires a reconsideration. For the above purpose, impugned orders are quashed. Proceedings are remanded to the respondent no.2-Board for fresh decision in accordance with law bearing in mind the observations made here-in-above. It will be open for the petitioner to make a representation and produce additional material to demonstrate that the application is complete in all respects.

7. Subject to fulfilling of other requirements, respondent no.2 shall reconsider the question of granting permission to the petitioner particularly addressing to the issue of justification for such a school in the secondary school without availing of Government aid.

8. If the petitioner makes a representation as mentioned here-in-above within a period of four weeks from today, respondent no.2-Board shall take a fresh decision expeditiously and preferably within a period of three months from the date of receipt of such a representation.

9. With these observations and directions, the petition is disposed of. Rule made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(raghu)